

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE



In re Utility Application of: RASMUSSEN, et al. Docket 35115.0400
Filed: 12/18/00 Date: February 22, 2000
Serial No. 09/467,669
For: METHOD AND APPARATUS FOR
PROCESSING CONTROL USING A MULTIPLE
REDUNDANT PROCESSOR CONTROL
SYSTEM

5 Commissioner for Patents
Washington, DC 20231

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DECLARATION IN SUPPORT OF
PETITION TO THE COMMISSIONER
FOR CORRECTION OF FILING DATE IN
UTILITY APPLICATION

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Sir:

I hereby declare that I am Henry G. Kohlmann, Attorney of record for the above identified application.

15 On December 18, 1999 I went to the Main Postal Center in Santa Ana, California, and deposited the above identified application via Express Mail with a postal clerk. I certified the mailing of these application documents for filing via Express Mail as EL214095539US on that date. The Main Postal Center at Santa Ana accepts Express Mail up to midnight of each day.

20 I arrived at the Post Office at approximately 11:30 p.m. and hand delivered the express mail envelopes to a postal clerk at approximately 11:45 p.m. However the postal clerk who received the package marked it as December 19, 1999 because the clerk had already changed the circular postal stamp to the next day. When the receipt was returned to me I noted that it had been post dated to December 19, 1999 at 12:01 a.m. I pointed

out to the clerk that that the date was incorrect. The clerk indicated that the date stamp had already been changed to the next day and the clerk was assigning the truck pickup time of 12:01 a.m. 12/19/99 to all mail. A supervisor who had observed my delivery and the acceptance of the deposit of the Express Mail interceded and advised the clerk in my
5 presence that it is the policy of the Santa Anna Main Post Office to accept and mark all Express Mail as of the date and time actually deposited with the clerk and that Express Mail is to be accepted up to midnight of that date and is not to be post dated.

The clerk was directed by the supervisor to change the date stamp and mark the receipt with the correct date of receipt of the Express Mail package as 12/18/99 and to
10 enter the corrected date and time into the computer. This was done and a copy of the corrected receipt is attached hereto. I note that the hand written date was overlooked.

On January 16, 2000, I became concerned when I did not receive the courtesy post card, which was apparently sent to the Phoenix office of my firm and not to me in Irvine, California. So I logged on to the U.S. Post Office internet site located at URL
15 (<http://www.usps.gov/cgi-bin/cttgate/ontrack2.cgi>) to determine the time and date of delivery. This site logs all of the Express Mail deposited with the Post Office shows the dates and times for each event associated with the Express Mail so deposited. I have attached the print out I obtained on January 16, 2000. The Post Office computer records show the deposit of the Express Mail package as being made on 12/18/99 at 11:56 p.m.,
20 in transit to the truck pickup station for pickup at 12:01 a.m. on 12/19/99 and that the Express Mail was delivered on December 21, 1999 at 1:49 p.m. This is an excellent source to check the actual recorded date that Express Mail is acknowledged as deposited by the post office. If Express Mail is not shown as deposited with the U.S. Postal Service by a given date then that date would not appear in the Post Office Express Mail tracking
25 site which shows the events associated with a given deposit. The Date of 12/18/99 does appear in the U.S. Post Office records indicating that the Express Mail was deposited with the U.S. Postal Service on that date. A print out of the various dates logged by the U.S. Post Office is attached to this declaration.

I did not deposit the Express Mail in a mail box but I hand delivered this Express
30 Mail package and deposited the same with a postal employee on 12/18/99. However, the employee elected to post date the delivery contrary to Post Office policy so that they

would not need to change a preset date stamp. It does take some effort to change the round date stamps as I observed when I was present at the correction of the receipt. Since the actions of the postal clerk were contrary to the policy of the Post Office at Santa Ana they were immediately corrected by a supervisor.

5 Accordingly, since both a corrected Express Mail receipt showing the circular date stamp having the date 12/18/99 and the Post Office Computer records which show the Express Mail in the Post Office system as of 12/18/99, two independent items of evidence which are consistent prove up a deposit of the express mail in question with the U.S. Post Office as of 12/18/99.

10 I hereby declare under penalty of perjury that the foregoing is true and correct and
that those things stated therein of my own personal knowledge are known to me and that
if called as a witness I could testify competently to the foregoing. I further declare that
this declaration was executed at Irvine, California on 22 February, 2000.

Respectfully Submitted

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Snell & Wilmer

Snell & Wilmer

Henry G. Kohlmann

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Henry G. Kohlmann
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Mail certification Date of deposit February 22, 2000

I hereby certify that the attached correspondence is being deposited with the United States Postal Service as Express Mail Post Office to Addressee service pursuant to 37 CFR § 1.10, Express Mail No. EL221119350US, on **February 22, 2000** postage prepaid and is addressed to the Commissioner for Patents, Washington, DC 20231.

Date: February 22, 2000